IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.2644 OF 2004

Shakuntala Baburao Shetye ... Petitioner

versus

The State of Maharashtra

and others ... Respondents

...

Mr. Surel S. Shah, for the Petitioner.

Mr. R.S. Apte, for Respondents Nos. 2 to 5.

Mr. K.V. Saste, A.P.P., for Respondent No.1.

...

CORAM : A.M.KHANWILKAR,J.

11th February 2005

P.C.:

. Heard Counsel for the parties. Perused the record. Rule. Rule made returnable forthwith by consent. Mr. Saste, A.P.P., waives notice for Respondent No.1. Mr. Apte waives notice for Respondent No.2 to 5. As short question is involved, petition taken up for final

disposal forthwith by consent.

2. Briefly stated, the Petitioner is the mother of deceased. Respondents Nos.2 to 5 have been named as accused in the criminal action instituted against them for offence punishable under sections 498A, 506, 304-B read with section 34 of the Indian Penal Code, or, alternatively, under section 306 of the I.P.C. During the trial, evidence has been recorded. It has come in evidence that the accused subjected the deceased to ill-treatment and harassment even in America during 9th January 2000 to 25th May 2000. In view of the said evidence, which has come on record, the prosecution moved an application under section 216 of the Cr.P.C. praying that charge, as framed, be altered and amended and period from 9-1-2000 to 25-5-2000 whilst in U.S.A. be added to the charge in the interest of justice. For, the charge, which was already framed against the Respondents Nos.2 to 5 is for the period from 28th June 1999 to 6th August 2002. This application was, however, resisted by the Respondents Nos.2 to 5 on the argument that as the offence during the said period is

committed outside India, the Court cannot take notice thereof in view of the mandate of section 188 of the Cr.P.C., 1973. That argument has been accepted by the trial Court and the application as filed by the prosecution is rejected.

3. The State has not carried the matter further, but the Petitioner, who is the mother of the deceased, has filed the present writ petition questioning the correctness of the said decision of the trial Court dated 2nd November 2004 passed below Exhibit 85 in Sessions Case No. 75 of 2003. The learned A.P.P., appearing for the State, however, states that the State is supporting the present petition, though it has not filed substantive petition before this Court questioning the correctness of the impugned decision independently.

4. Counsel for the Petitioner, and Respondent No.1, who has adopted the arguments of the Petitioner, has pressed into service decision of the Apex Court in the case of Ajay Aggarwal v. Union of India and others reported in (1993) 3 S.C.C. 609, as well as decision of Nagpur High

Court in the case of Harnarayan Bhikamchand and others v. Govindram Agyaram, reported in A.I.R. 1940 Nagpur 245, to contend that even though the offence has been committed outside India, that would not preclude the Court from altering the charge, so as to include the period from 9-1-2000 to 25-5-2000. It is submitted that the bar under section 188, Cr.P.C., will come into play only if the Court was to finally give ruling on the said charge, but it will not preclude the Court from altering the charge as evidence has already been let in with regard to the said period.

5. Mr. Apte, for the Respondents Nos.2 to 5, on the other hand, contends that that course is not open unless sanction is obtained as required under section 188 of the Cr.P.C. He submits that the decision of the Apex Court in fact supports his submission that if the offence is committed outside India and complete in itself, without conspiracy, then neither any inquiry into that offence is permissible, nor the Court can take cognizance unless sanction is accorded by the appropriate authority under section 188 of the Code.

6. Having considered the rival submissions, I find substance in the argument as canvassed on behalf of the Petitioner that since relevant evidence has already come on record in the course of trial of the case, it would be appropriate for the trial Court to alter the charge in exercise of powers under section 216 of the Code. Indeed, the offence having taken place outside India, the Court will not be competent to enquire into that charge (the altered charge) unless sanction is accorded by the appropriate authority within the meaning of section 188 of the Code. This view is reinforced by the legal position expounded in the two decisions pressed into service. The legal position is that, obtaining of sanction under section 188 of the Cr.P.C. is not a condition precedent for taking cognizance of the offence. If need be, it could be obtained before the trial begins. (See para 27 of Ajay Aggarwal's case [supra]). In the present case, indeed, the trial has already progressed in relation to other charges and during the course of that trial, evidence has been recorded, which spells out commission of offence in U.S.A. during the

relevant period; And as it is the prosecution case that the evidence as recorded spells out the offence committed by the accused outside India - and if offence is made out, the trial Court will be obliged to alter the charge and take the matter to its logical end to meet the ends of justice. However, the further inquiry into the said offence (altered charge) can be proceeded by the trial Court, as is permissible by law, only after sanction is accorded by the appropriate authority under section 188 of the Code. This view is supported even by the decision in Harnarayan's case (supra), as that was the course adopted even in that case, as can be discerned from the penultimate paragraph of the said decision.

7. Accordingly, this petition should succeed. The application as filed by the prosecution under section 216 of the Cr.P.C. before the trial Court is allowed on the condition that any inquiry into the altered charge can be proceeded with by the trial Court in accordance with law only after sanction under section 188 of the Cr.P.C. is accorded by the

appropriate authority. Petition disposed of on the above terms.

(A.M.KHANWILKAR,J.)